O/Penicillin/51

1951.

File No. 22/51

Legal Dept

BRANCH

Subject:—

~~Notificati~~ Opinion on the Bombay Penicillin Control ~~Order~~ 1950

File No, O/Penicillin/51

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22/51

C O N T E N T S.

Legal Department File No. O. Penicillin/51

Serial No.	R.I./O.No.	Subject	Pages.
		Opinions under the Bombay Penicillin control order/1950	
1)	O.No. G-19/10-1-51	Whether the circular proposed to be issued under the order by Drugs Controller to all Importers and manufacturers of Penicillin would in any way interfere with Inter-State Commerce (Copies not taken).	1-10
2)	O.No. G-148/16-4-51	Whether the Drugs Controller has power under the Bombay Penicillin Control Order, 1950 to effect transfers of stocks from importers to wholesellers or other importers.	11-12
3)	O.No.G-60/10-2-51	Re: Prosecution of Importers who supplied the stock to a company without the written permission of the State Govt. Whether the company who can be prosecuted for obtaining the stock of the introduction of the said order.	13-14
4)	O.No. G-166/27-4-51	Re: Ban imposed on M/S Cipla debarring them from selling their commodity in the city of B'bay and at the same time refusing to take over the stocks from them.	15-20

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Legal Department.

The question for consideration is whether the Drugs Controller has power under the Bombay Penicillin Control Order, 1950 to effect transfers of stocks from importers to wholesalers or other importers.

Clause 15(1)(b) of the said Order provides that if in the opinion of the State Government it is necessary or expedient to do so, it may by order direct the sale of Penicillin to such person, persons or institution and such quantities subject to such conditions as may be specified in the Order. The State Government has therefore the power to direct the importers whose stock lies frozen to sell their stock to other importers or to wholesalers.

Id./.....

Additional Secretary to Government.

U.R. to Drugs Controller, No. G-148 dated the 16th April 1951.

SMR 26-7-56
4 Copies.

The replies to the questions raised by the Drugs Controller are as follows:-

Question No. 1:- The importers who supplied Penicillin to M/s. Baker & Co. on 9-5-50 and 19-5-50 without the written permission of the State Government can be prosecuted under paragraph(i)of Local Self Government and Public Health Department Order No. 6637/33-H(i), dated 8-5-50. In respect of the stocks sold on 19-5-50 the importers can also be prosecuted under paragraph(ii)of the said Order for not declaring those stocks to the Drugs Controller on 12-5-50 provided that these stocks are held or possessed by them on 8-5-50 and also under paragraph(iii)of the Order for not declaring those stocks on Monday, 15th May 1950 provided these stocks were held or possessed by them on the preceding Saturday, the 13th May, 1950.

Question No. 2:- M/s. Baker & Co. who are wholesale dealers in Penicillin, cannot be held liable under the Bombay Panicillin Control Order, 1950 for obtaining the supplies after the introduction of the said order. Nor can they, being wholesalers, be held liable for disposing of them to other dealers by wholesale without authority of the State Government, as there is no provision in the Order restricting ~~[illegible]~~-dealings by wholesale dealers.

Question No. 3:- It is not clear from the Drugs Controller's note whether M/s Smith & Co. are retailers or wholesalers. If they are wholesalers no action against them seems possible. If they are retailers, then they can be prosecuted for breach of clauses 4 and 16 only if evidence be available to prove their continuity in business as retailers in penicillin and the one transaction mentioned by the Drugs Controller of purchase and sale will not be sufficient

to prove such continuity. Besides that transaction appears to be a wholesale transaction. Moreover 5 vials found in possession of the firm is too small a quantity for being considered to be in excess of reasonable requirements under clause 13.

Id./..... 8/2

Additional Secretary to Government.

U.R. to D.C.,No. G-60, dated the 10th February 1951.

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4 Copies.

Legal Department.

It does not appear advisable to tell the Solicitors about the law under which the Drugs Controller acts. At the most they may be told that such action is covered by the provisions of the Bombay Penicillin Control Order, 1950. Under clause 15 of the Bombay Penicillin Control Order, the State Government has power by an order to prohibit sale or disposal of Penicillin except in such circumstances and under such conditions as may be specified in the Order and this power of the State Government has been delegated to the Drugs Controller under Government Notification, Local Self Government and Public Health Department No. 6637/33 dated the 11th May 1950. The State Government has under Government Order, Local Self Government and Public Health Department No. 6637/33-H(i), dated the 8th May 1950 issued under clauses 15, frozen the stock of Penicillin with the importers and producers in the State of Bombay, but such frozen stock can be sold by the importers or producers with the written permission of the State Government. The Drugs Controller is not empowered under the said freezing order to issue a written permission to sell. It would be therefore necessary to amend that order and include the words "or the Drugs Controller, Bombay" after the words 'State Government' occuring in sub-clause(i)of the order dated the 8th May 1950. There is nothing ultra vires, illegal or unconstitutional in the procedure followed by the Drugs Controller except that he should act directly under clause 15 and not under the order dated the 8th May 1950. The restrictions put on the right of the importers to carry on trade and business are reasonable restrictions in the interest of the general public (vide cl. 19(6)of the Constitution of India).

Messrs Little and Company may be asked to give a suitable reply to the Solicitors.

Id./.....

Additional Secretary to Government.

U.R. to Drugs Controller, No. G-166 dated the 27th April 1951.

SMR 26-7-56, 4 copies.